THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.19345 OF 2005

March 17, 2006.

Between:

N/s Sri Balaji Security Force & Investigations,

D.No.7-9-2, Vasavinagar, M.R. Palle,

Tirupati, Chittoor District, represented by

its Proprietor, A. Subramanyam. .. Petitioner.

And

The Tirumala Tirupathi Devasthanams,

Tirupati, Chittoor District, represented by

its Executive Officer and six others. .. Respondents.

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ORDER:

The 1st respondent-Tirumala Tirupati Devasthanams, Tirupati issued a tender notification dated 5.04.2004, inviting sealed tenders from reputed security agencies, which can provide round-the-clock Ex-servicemen security Services to the Tirumala Tirupati Devasthanams for a period of 12 months. In response to the same, the writ petitioner submitted its tender within the stipulated date. Technical bids were opened on 21.04.2005. As per Clause 40 of the tender schedule, financial bids shall be opened at a later date in the presence of tenderers by the authorized officers of the Tirumala Tirupati Devasthanams, which will be intimated to the tenderers. The petitioner states that he did not receive any such intimation about opening of the financial bids and subsequently, the petitioner came to know that its financial bid was not opened on the ground that its technical bid did not meet the prescribed pre-qualifications. Aggrieved by the same, the petitioner filed W.P.No.13129 of 2005 seeking a direction to the respondents to forth with open its price bid and to consider the same along with other tenderers. While directing Rule nisi, granted interim direction on 23-6-2005 as under:

> "The selection pursuant to the tender notice may be finalized. However, it shall be made clear to the selected candidate that his selection is subject to further orders in W.P.M.P.No.16679 of 2005."

In pursuance thereof, having finalized the tenders, the 2nd respondent awarded security service contract to respondents 3 to 6 herein with effect from 1.07.2005. The petitioner alleges that respondents 3 to 6 did not satisfy the tender conditions and that none of them possessed better qualification than the petitioner and in spite of the same, they were awarded contract illegally. It is further alleged that apart from awarding the above said work of providing security service to respondents 3 to 6, the Board of Trustees of the 1st respondent by resolution No.225 dated 3.07,2005 sanctioned 51 Security Supervisors for one year for a total amount of Rs.36,60,884/- and also decided to engage the said Supervisors through respondents 3 to 6 herein without inviting fresh tenders. Aggrieved by the said action of respondents 1 and 2, this Writ Petition is filed seeking to set aside the security service contract awarded to respondents 3 to 6 pursuant to the tender notice dated 5.4.2005 and the Board resolution dated 31.7.2005 by declaring the same as arbitrary, discriminatory, *mala fide*, and illegal; and consequently direct the 1st respondent to call for fresh tenders to provide security service including Security Supervisors and to consider the case

of the petitioner for awarding the contract.

The case of the petitioner as pleaded in the affidavit filed in support of the writ petition is as under:

The petitioner firm has been providing services for security, vigilance, industrial, private investigations etc., and that the proprietor of the petitioner concern is an ex-Air Force Warrant Officer having put in 25 years of service in the Indian Air Force and that he is well acquainted with the field of security services. After his retirement from the Indian Air Force, the petitioner-security agency was established with its registered office at Tirupati. Though the 1st respondent has security staff in its cadre strength, since the security guards available in the cadre are inadequate, by letter dated 29.08.2000, the 2nd respondent invited the petitioner to provide security services to the pilgrims and for the said purpose requested the petitioner to submit its tender and having accepted the same, the 1st respondent by letter dated 31-10-2000 called upon the petitioner to enter into a service contract to provide 50 ex-servicemen personnel carrying the salary for each security guard at the rate of Rs.2,550/- per month. Accordingly, the petitioner provided 50 ex-servicemen personal with effect from 1.10.2000. An agreement of contract to that effect was executed in favour of the petitioner for a period of two months. Subsequently, the services of the petitioner to provide security personnel to the 1st respondent was extended from time to time, and according to the number of personnel required by the 1st respondent, the petitioner has been providing ex-servicemen on the same terms and conditions for various temples under the control of the 1st respondent situated in and around Tirupati and also to the educational institutions, hospitals, hotels etc under the management of the 1st respondent, apart from two ghat roads and the foot way from Alipiri to Tirumala. Thus, the petitioner has been continuously providing security services from 1.10.2000 to 30.06.2005. Though initially Rs.2,550/- per month per guard was paid, from June 2002 onwards the same was reduced to Rs.2,400/- per month per guard. Apart from the petitioner, one more local security agency viz., M/s Srinivasa Security Services was also providing security services to the 1st respondent on payment of Rs.2,400/- per month per guard. The services rendered by the ex-servicemen personnel provided by the petitioner were appreciated several times by the 1st respondent and they were also given cash incentives on many occasions. While so, from February, 2003 onwards the 1st

respondent nominated the 3rd respondent herein, to provide security services without inviting tenders and strangely the security guards provided by the 3rd respondent were paid salaries at the rate of Rs.5,007/- per guard per month. The disparity in the wages paid to the security guards provided by the petitioner and the security guards provided by the 3rd respondent led to wide range of criticism in the media, and consequently, the 1st respondent had to withdraw the security services provided by the 3rd respondent after three months and the security services being provided by the petitioner and M/s Srinivasa Security Services were continued at the rate of Rs.2,400/- per month per security guard. Even during the year 2003, in pursuance of tender notice dated 14.07.2003, the petitioner participated and having accepted the same, the petitioner was permitted to continue to provide security services at the same rate of Rs.2,400/- per guard. Though the 3rd respondent did not participate in the tenders pursuant to the tender notification dated 14.07.2003, the security services of 3rd respondent were once again taken by the 1st respondent on nomination basis from the month of November, 2003. In pursuance thereof, the 3rd respondent was permitted to provide 132 security guards at the rate of Rs.5,007/- per guard, 3 Assistant Security Officers at the rate of Rs.8,323/- and 11 Supervisors at the rate of Rs.6,568/- per month. That apart, Gurkhas were also engaged through the 3rd respondent for providing security on the foot way from Alipiri to Tirumala and they were paid the same salary at the rate of Rs.5,007/- per month. That apart, all the cadres of security personnel provided by the 3rd respondent were provided with rent free accommodation together with free electricity, free water and etc., They were also paid service charges at the rate of 12% and service tax at 8%. Neither the said benefits were extended to the petitioner, nor the salary on par with the personnel provided by the 3rd respondent was paid to the petitioner in spite of several requests. That apart, the 3rd respondent was permitted to engage about 30 women candidates for security services on nomination basis without inviting any tenders. Though the petitioner was awarded work pursuant to the tenders submitted by it, such facility of providing women security personnel was not extended to the petitioner, though women security personnel were available on the rolls of the petitioner.

While so, in the year 2005 fresh tenders were invited under the tender notice dated 5-4-2005, in which though the petitioner participated, its financial bid was not

opened on the ground that it failed to satisfy pre-tender qualifications specified under Clause-3 of the Tender Schedule. On the other hand, the respondents 3 to 6, though did not satisfy the requirements were awarded the contract. Hence, this writ petition with a prayer as noted above.

The petitioner alleges that the 2nd respondent with a *mala fide* intention to favour some of the security agencies, particularly the 3rd respondent, had stipulated certain conditions in the tender notice dated 5.4.2005 to suit the requirements of the 3rd respondent and to eliminate the petitioner and M/s Srinivasa Security Services which were providing security services from 2000 onwards at a minimal rate of Rs.2,400/- per month per guard. The conditions of tender with which the petitioner is aggrieved are as under :

> *"**Condition No.3**. - The Qualitative Requirements for pre-qualification are as follows and only those agencies, which fulfill the following criteria, are eligible to be evaluated. Further, it is to be noted that those agencies not fulfilling the following criteria will be summarily rejected and in this regard, the decision of TTD is final and binding on the tenderers without any recourse.*
>
> *(a) … … … … … …*
>
> *(b)… … … … … …*
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> (c) Average annual turnover during the preceding three years ending March, should be atleast Rs.60.00 lakhs from security/guarding services only. Latest income tax assessment order/annual report of last 3 years must be furnished.
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> (d) … …. … … …
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> (e) … … .. … …
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> (f) … … … …. …
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> (g) … … … …. …
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> (h) … … … … …
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> (i) … … … … …
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> (j) … … … … …
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> (k) Should have a minimum strength of 200 ex-servicemen guards & 25 women security guards on their rolls.
>
> (l) … … … … …
>
> (m) … … … … …"

The petitioner contends that whereas the petitioner as well as the 3rd respondent who was entrusted with the security services on nomination basis for the year 2003 were providing adequate security services, the 1st respondent paid salaries to the personnel of the 3rd respondent at the rate of Rs.5,007/- per month per security guard, whereas the personnel provided by the petitioner were paid at the rate of Rs.2,400/- per month per guard. That apart, the 3rd respondent was asked to provide 200 security personnel, including 3 Assistant Security Officers, 11 Security Supervisors and 132 Security Guards at the rate of Rs.5,007/- per month per security guard, Rs.8,323/- per Assistant Security Officer and Rs.6,568/- per month per Security Supervisor. Thus, the annual turnover of the 3rd respondent shot up during the years 2004 and 2005 and it could satisfy condition No.3(c) under which the minimum annual turnover during the preceding 3 years should be Rs.60 lakhs from security /guarding service only.

The petitioner alleges that condition No.3(c) was stipulated only to suit the respondents 3 to 6 and to eliminate the petitioner for extraneous considerations. As a matter of fact, respondents 4 and 5 have no ex-servicemen at all, and therefore, their annual turnover during the preceding three years does not satisfy the requirement of condition No.3(c). The said fact is clear from the fact that the respondents 4 to 6 published notification in the month of June, 2005 inviting ex-servicemen for deployment in Tirumala Tirupati Devasthanams which itself shows that they do not have 500 number of ex-servicemen not only as on the date of submission of tender schedule, but even thereafter. In spite of the same, respondents 4 to 6 were awarded the contract. It is also contended that condition No.3(c) requiring the turnover of Rs.60.00 lakhs has no nexus with the object sought to be achieved and such a condition was imposed for the first time by the 1st respondent only to eliminate the petitioner who has been providing security services from the year 2000 onwards at a nominal rate of Rs.2,400/- per month per guard.

The petitioner contends that since it was running the security services single handedly from 1.10.2000 up to 30.06.2005 without any blemish, the 1st respondent ought to have awarded the contract along with respondents 3 to 6, but there is absolutely no justification in eliminating the petitioner. It is alleged that elimination of the petitioner was for extraneous considerations at the instance of the 2nd respondent who is also impleaded as 7th respondent by name.

The further contention of the petitioner is that though the 4th respondent quoted Rs.3,480/- per month per guard, at the instance of the 7th respondent the price bid was increased from Rs.3,480/- to Rs.4,700/- per month per guard. The said action is not only illegal, but also against the interest of the 1st respondent-Devastanam.

The petitioner also contends that the action of the 1st respondent in awarding a further contract to respondents 3 to 6 for providing 51 security Supervisors for a period of one year without inviting fresh tenders under supplemental agreements is arbitrary, illegal and contrary to law.

On behalf of 1st respondent-Devastanam, the Executive Officer filed a counter-affidavit stating that the petitioner who was an unsuccessful bidder, who did not fulfil the pre-qualification as contemplated under Clauses 3(c) and Clause 3(k), cannot maintain the present Writ Petition. It is further stated that the 1st respondent-Devastanam never fixed wages to the security guards employed by the petitioner and that the petitioner itself quoted the rates for providing security services in October, 2000 and it entered into agreement and deployed Security guards during the period of agreement. It is also stated that in pursuance of the impugned tender notice 31 tenders were received and after finalizing the same the work was entrusted to the selected security agencies with effect from 1.07.2005. With regard to the contention raised by the petitioner relating to additional security Supervisors, it is stated that respondents 3 to 6 provided 600 security guards. Since there was no sufficient security staff of the 1st respondent-Devastanam to supervise the work of the security guards and since it was felt that coordination between the agencies would be maintained if the contract is awarded to the same agencies, supplemental agreements were executed without calling for tenders. All other allegations made by the petitioner have been denied.

The 7th respondent filed a separate counter-affidavit denying *mala fides* alleged and stating that the 1st respondent decided to take large number of private personnel to safeguard its huge properties. The allegations that at his instance the 3rd respondent was awarded the work and that he misled the 1st respondent for sanctioning 51 security Supervisors have been categorically denied. It is also stated

that the whole tender process underwent after careful examination and the allegation that he stipulated condition No.3(c) only to eliminate the petitioner is far from truth and without any basis.

I have heard the learned counsel for both the parties and perused the material on record.

From the counter-affidavit filed on behalf of the 1st respondent it is clear that the petitioner was providing security services to the 1st respondent-Devastanam from the year 2000 onwards. May be that the petitioner was being paid at the rate of Rs.2,400/- per month per guard. However, the material on record shows that Rs.2,400/- per month per guard was the rate quoted by the petitioner itself and having accepted the same the personnel provided by the petitioner were paid at that rate by the 1st respondent. In the counter-affidavit of the 1st respondent it has been explained that the petitioner had provided security guards at the rate of Rs.2,400/- per month per guard as quoted and agreed by him, however, security guards provided by the 3rd respondent were paid as per the guidelines framed by the Director General, Rehabilitation, Army Headquarters, New Delhi. Thus, having agreed to provide security at the rate of Rs.2,400/- per month per guard, the petitioner cannot now contend that it was deliberately paid lesser rates.

The law is well-settled that the State or its instrumentalities can choose their own terms in inviting tenders and that the tender conditions cannot normally be subjected to judicial scrutiny unless they are so arbitrary or irrational or *ex facie* in violation of Article 14 of the Constitution of India. In the case on hand, Condition No.3 (c) under which the average annual turnover during the preceding three years should be atleast Rs.60.00 lakhs from security services only, cannot be said to be either irrational or unreasonable, merely on the ground that the petitioner was unable to satisfy the same. Further, merely because the petitioner was providing security services to the 1st respondent-Devastanam for the past about five years at much lesser rates than the 3rd respondent, it cannot be presumed that Condition 3 (c) was prescribed deliberately to eliminate the petitioner. The services rendered by the petitioner during the past five years was a voluntary act on the part of the petitioner and even the salaries to the guards provided by it were paid at the rates quoted by it. Even the *mala fides* alleged against the 7th respondent are vague and

in the absence of any supporting material to substantiate, the same cannot be taken into consideration.

Admittedly, the petitioner could not satisfy the tender conditions and is an unsuccessful bidder. As held in **Raunaq International Ltd v. I.V.R. Constructions**, the petitioner, being an unsuccessful bidder has no legal right to challenge the acceptance of tenders in favour of other qualified bidders. The mere fact that the 3rd respondent was granted work on the basis of nomination during the previous years is immaterial for the purpose of the present writ petition since the petitioner never challenged the same at any point of time.

It is also relevant to note that the petitioner has not challenged the validity of the tender condition specified under Condition No.3 (c), but his grievance is that they are impossible of compliance. Since admittedly the other tenderers have successfully qualified themselves, the plea of the petitioner that conditions in question are impossible of compliance cannot be accepted.

The contention of the petitioner that keeping in view its unblemished service for the past 5 years, the 1st respondent ought to have awarded the work to it along with respondents 3 to 6 is without any substance and contrary to the settled principles of law. Relaxation of essential pre-qualification conditions is impermissible and at any rate the same would amount to benefiting one of the disqualified parties. Hence, I am unable to find fault with the action of the 1st respondent in not opening the price bid of the petitioner.

Even with regard to supplemental agreements for the purpose of engaging 51 Security Supervisors, it is explained by the 1st respondent that Security Supervisors are required for the purpose of supervising the work of security guards, and therefore, respondents 1 and 2 thought it fit to award the said work to the same agencies so as to maintain coordination.

However, learned counsel for the petitioner while placing reliance upon **Sterling Computers Ltd., v. M/s M & N Publications Ltd.,** contended that the supplemental agreements are fresh agreements with fresh terms and conditions, and therefore, the same cannot be executed without inviting tenders.

In the said case, supplemental agreements were held to be bad since it was

found that the said agreements were entered to benefit parties who were admittedly defaulters. In the circumstances, the Supreme Court held that a fresh contract ought not to have been granted in the garb of an agreement for extension of period of the original agreement taking into account irrelevant factors.

The facts and circumstances in the case on hand are clearly distinguishable. As pleaded by the 1st respondent the work relating to security Supervisors was awarded to respondents 3 to 6 only for the purpose of maintaining perfect coordination. It is an integral part of the work already awarded to the respondents 3 to 6. Hence, the decision in **Sterling Computers Ltd., v. M/s M & N Publications Ltd** (2 supra), is clearly distinguishable and the work awarded to the respondents 3 to 6 under the supplemental agreements cannot be held to be arbitrary or illegal. Particularly in the absence of element of public interest and violation of any statutory provision, the interference by this Court under Article 226 of the Constitution of India is not warranted.

It is also relevant to note that where as the tenders were finalized and the work was awarded in favour of the respondents 3 to 6 with effect from 1.7.2005, this Writ Petition was filed only on 31.08.2005, which itself shows that there are no *bona fides* in the claim made by the petitioner.

Viewed from any angle, the Writ Petition is devoid of merit and the same is accordingly dismissed. No costs.

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(G. ROHINI, J.)

17th March, 20006.

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THE HON'BLE Ms. JUSTICE G. ROHINI

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